

JUDGE COTE

12 CIV 4635

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
KEVIN WATKINS,

Civil Action No.

Plaintiff,

v.

NOTICE OF REMOVALDEREK SMITH, ADRIANE EISEN, BRYAN S. ARCE,
WILLIAM K. PHILLIPS, ISMAIL S. SEKENDIZ,
LAURIE E. MORRISON, ZAFER A. AKIN, MARJORIE
MESIDOR, DEREK T. SMITH LAW GROUP, P.C.,
ARCE LAW GROUP, PC, PHILLIPS & PHILLIPS,
and JESSICA DUGUE,Defendants,
-----X

Defendants, Derek Smith, Adriane Eisen, Bryan S. Arce, William K. Phillips, Ismail S. Sekendiz, Laurie E. Morrison, Zafer A. Akin, Marjorie Mesidore, Derek T. Smith Law Group, P.C., Arce Law Group, PC, Phillips & Phillips, and Jessica Dugue (herein "Defendants") by and through their attorneys, DeToffol & Associates, hereby notice the removal of the above-captioned action pursuant to 28 U.S.C. § 1441 et seq., based on the following grounds:

1. A civil action was commenced and is now pending in the Civil Court of the City of New York, County of New York, in which Kevin Watkins is the Plaintiff and Derek Smith, Adriane Eisen, Bryan S. Arce, William K. Phillips, Ismail S. Sekendiz, Laurie E. Morrison, Zafer A. Akin, Marjorie Mesidore, Derek T. Smith Law Group, P.C., Arce Law Group, PC, Phillips & Phillips, and Jessica Dugue are the Defendants. This action is styled *Kevin Watkins v. Derek Smith, Adriane Eisen, Bryan S. Arce, William K. Phillips, Ismail S. Sekendiz, Laurie E. Morrison, Zafer A. Akin, Marjorie Mesidore, Derek T. Smith Law Group, P.C., Arce Law Group, PC, Phillips & Phillips, and Jessica Dugue*, Index No. 14726/2012, Civil Court of the City of New York, County of New York (hereinafter, the "Action").

2. The Action asserts claims for alleged violation of Plaintiff's rights under The Racketeer Influenced and Corrupt Organization Act; 18 U.S.C. 1962 ("RICO"), the Sherman Anti-Trust Act; 15 U.S.C. Sec. 1, as well as alleged libel and intentional infliction of emotional distress under New York Common Law, and "unfair business practices" (Note: Plaintiff's Complaint makes no reference to whether the "unfair business practices" claim is pursuant to federal law or state law and makes no reference to any corresponding statute.)
3. Plaintiff commenced the Action on May 24, 2012 by filing a summons and complaint with the Civil Court of the City of New York, County of New York. In accordance with 28 U.S.C. § 1446(a), a copy of the summons and complaint is annexed hereto as "Exhibit A" for filing.
4. On May 25, 2012, Plaintiff caused individual Defendants Adriane Eisen and Bryan S. Arce to be served with the annexed summons and complaint by personal service to Bryan S. Arce, who also accepted service of process on behalf of Defendant Adriane Eisen. Plaintiff completed service to Adriane Eisen by mailing a copy of the summons and complaint to her at her actual place of business, 30 Broad Street, 35th Floor New York, NY 10004, within twenty days of serving the summons and complaint as required by C.P.L.R. § 308(2).
5. On May 25, 2012, Plaintiff caused individual Defendants Derek Smith, William K. Phillips, Ismail S. Sekendiz, Laurie E. Morrison, and Marjorie Mesidore to be served with the annexed summons and complaint by leaving said summons and complaint with a person of suitable age and discretion, Dawn DeMaio (Defendant Derek Smith's secretary) at their actual place of business, 30 Broad Street, 35th Floor New York, NY 10004. To date, these Defendants have not received any copies of the summons and complaint via mail as required by C.P.L.R. § 308(2), and therefore have not been properly served.
6. On May 25, 2012, Plaintiff caused individual Defendant Jessica Dugue to be served with the annexed summons and complaint by leaving said summons and complaint with her attorneys' office; with Dawn DeMaio. Plaintiff completed service to Jessica Dugue by mailing a copy of

the summons and complaint to her last known address within twenty days of serving the summons and complaint as required by C.P.L.R. § 308(2).

7. On May 25, 2012, Plaintiff caused corporate Defendants Derek T. Smith Law Group, P.C., Arce Law Group, PC, and Phillips & Phillips to be improperly served with the annexed summons and complaint by leaving said summons and complaint with a person who was neither their agent, nor authorized to accept service of process on behalf of any of the corporate Defendants; Dawn DeMaio. To date, there has been no indication that Plaintiff served these three corporate Defendants via the New York Secretary of State. Defendants have failed to properly serve these corporate Defendants pursuant to C.P.L.R. § 311.

8. To date, Plaintiff has failed to properly serve individual Defendant Zafer A. Akin with the annexed summons and complaint, as this Defendant does not work at, or maintain an office at, 30 Broad Street, 35th Floor New York, NY 10004 where the summons and complaint was left. The summons and complaint for this Defendant was neither left at his actual place of business, nor mailed to his actual place of business (or even mailed to 30 Broad Street, 35th Floor New York, NY 10004 for that matter) as required by the C.P.L.R.

9. Accordingly, this Notice of Removal is being filed within thirty (30) days after Defendants' earliest receipt of the summons and complaint as required by 28 U.S.C. § 1446(b). The annexed summons and complaint comprise all prior pleadings and/or orders served on Defendants to date.

10. The above-described action is a civil action of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1331 in that the suit is for purported Federal RICO and Anti-Trust violations. This action could have originally been brought in Federal Court.

11. In addition, this Court has supplemental jurisdiction over Plaintiff's New York State claims under 28 U.S.C. § 1367(a).

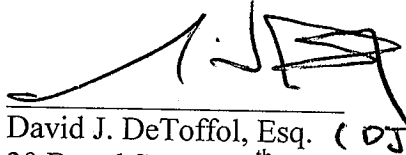
12. Written notice of the filing of this Notice of Removal shall promptly be given to all adverse parties and filed, along with a copy of this Notice of Removal, with the Clerk of the Civil Court of the City of New York, County of New York, as required by 28 U.S.C. § 1446(d).

13. By filing this Notice of Removal, Defendants do not waive any defenses that may be available to them.

WHEREFORE, Defendants pray that the above-captioned action be removed, without waiver of procedural or substantive defenses, from the Civil Court of the City of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: New York, New York
June 13, 2012

DeToffol & Associates
Attorneys for Defendants

By: 
David J. DeToffol, Esq. (0507877)
30 Broad Street, 35th Floor
New York, New York 10004
(212) 962-2220

TO: Anil Taneja, Esq.
Attorney for Plaintiff
244 5th Avenue, 2nd Floor
New York, New York 10001
(212) 592-4000

EXHIBIT "A"

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X
Kevin Watkins

Plaintiff,

-against-

Derek Smith, Adriane Eisen, Bryan S. Arce, William K. Phillips, Ismail S. Sekendiz, Laurie E. Morrison, Zafer A. Akin, Marjorie Mesidor, Derek T. Smith Law Group, P.C., Arce Law Group, PC, Phillips & Phillips, and Jessica Dugue.

Defendants.
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Index No.

0014726

2012

SUMMONS

FILED

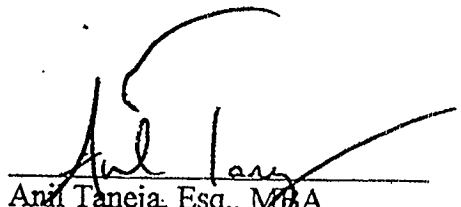
MAY 24 2012

**NEW YORK COUNTY
CIVIL COURT**

To the above named Defendants:

YOU ARE HEREBY SUMMONED to serve a notice of appearance on the Plaintiff's Attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear, judgment will be taken against you by default for the relief demanded in the attached complaint.

Dated: May 23, 2012
New York, N.Y.


Anil Taneja, Esq., MBA
244 5th Avenue 2nd Floor
New York, N.Y. 10001
(212) 592-4000

* You are hereby summoned to appear in the Civil Court
OF THE CITY OF NEW YORK, STATE OF New York, At 111 CENTRE STREET
NEW YORK, N.Y. 10013.

You May find this in the Uniform Rules for Trial Courts 208-6

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Kevin Watkins,

-----X Index No.

Plaintiff,

-against-

COMPLAINT

Derek Smith, Adriane Eisen, Bryan S. Arce, William K.
Phillips, Ismail S. Sekendiz, Laurie E. Morrison, Zafer A.
Akin, Marjorie Mesidor, Derek T. Smith Law Group, P.C.,
Arce Law Group, PC, Phillips & Phillips, and Jessica Dugue

Defendants.

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The Plaintiff, Kevin Watkins, by his attorney Anil Taneja, complaining of the Defendants, alleges the following:

1. The parties are over the age of 18 years.
2. Plaintiff Kevin Watkins, whose business address is 244 5th Avenue Ste 2950, New York, NY 10001, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.
3. Defendant Derek Smith, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.
4. Defendant Adriane Eisen, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

5. Defendant Bryan S. Arce, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

6. Defendant William K. Phillips, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

7. Defendant Ismail S. Sekendiz, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

8. Defendant Laurie E. Morrison, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

9. Defendant Zafer A. Akin, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

10. Defendant Marjorie Mesidor, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an individual authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance

Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

11. Defendant Derek T. Smith Law Group, P.C., whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an corporation authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

12. Defendant Arce Law Group, P.C., whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is an corporation authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

13. Defendant Phillips & Phillips, whose business address is 30 Broad Street, 35th Floor, New York, NY 10004, is a partnership authorized to provide services to the public including representation of claimants with discrimination complaints before the Unemployment Insurance Appeal Board, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board.

14. Defendant Jessica Dugue, who resides at 402 E 105th Street 3B, New York, NY 10029-1233, is an individual who is, upon information and belief, employed by the other defendants to fabricate false claims against individuals and businesses targeted by her employers for extortion demands or unfair business practices.

15. On or about May 14, 2012, plaintiff received notice that a client plaintiff had represented before the Merit Systems Protection Board had designated Defendants as the client's representatives in that proceeding. Plaintiff called the Defendants at their office on or about May 14, 2012, and confirmed that they had communicated with his client. Plaintiff then notified the Judge in that matter of the change in representation copied to the defendants. Plaintiff was left a voicemail message by defendant Adriane Eisen stating that she would send him a letter stating that, while they had met with Plaintiff's client, he had not retained them.

16. On or about May 16, 2012, defendants sent a document using a facility in interstate commerce to New Jersey before it was delivered to plaintiff.

17. A letter threatening public exposure of untrue and embarrassing allegations unless plaintiff discussed "an amicable resolution" was enclosed with an attachment. The document further falsely alleged that plaintiff was engaged in the criminal activity of seeking payment of fees for unemployment hearing representation without prior approval of the Unemployment Insurance Appeal Board of said fee.

18. Upon information and belief, all of the defendants work together in the same office and as a single interrelated operation. With the exception of defendant Dugue, all of the defendants are subject to the disciplinary rules and owe the plaintiff a duty to uphold and follow the dictates of the rules of professional responsibility (DR- 1-102 A (3), (4), (5), (6)).

FIRST CAUSE OF ACTION- RACKETEERING

19. Plaintiff realleges paragraphs 1 through 18.

20. The threats contained in the letter and attachment the defendants sent plaintiff constitute extortion under New York Law (Penal Law sec. 155.05).

21. The threats contained in the letter and attachment the defendants sent plaintiff constitute extortion under federal law as they were sent using a facility in interstate commerce (18 U.S.C. 1952(a)(3)).

22. The misrepresentations contained in the letter and attachment the defendants sent plaintiff constitute fraud and as they were sent in interstate commerce they constitute fraud under federal law.

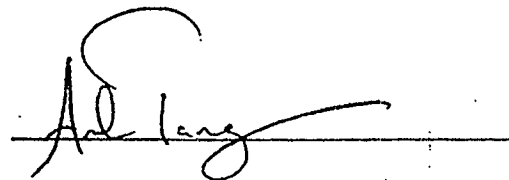
23. Upon information and belief, defendants send out hundreds of similarly extortionate letters each month.

24. The criminal acts recited above form the necessary predicates for a civil action brought under 18 USC 1962 for racketeering.

WHEREFORE, the Plaintiff demands judgment against the Defendants granting the following relief (each Cause of Action being \$25,000 or less) :

1. \$25,000 from each defendant for violation of 18 USC 1962.
2. \$25,000 from each defendant for libel.
3. \$25,000 from each defendant for unfair business practice.
4. \$25,000 from each defendant violation of the Sherman Act.
5. \$25,000 from each defendant for the intentional infliction of emotional distress.

Dated: May 23rd, 2012


Anil Taneja, Esq.
244 5th Avenue 2nd Floor
New York, NY 10001
(212) 592-4000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket #:

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KEVIN WATKINS,

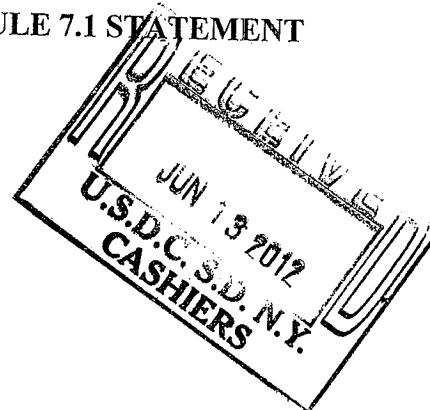
Plaintiff,

-against-

DEREK SMITH, ADRIANE EISEN, BRYAN S. ARCE,
WILLIAM K. PHILLIPS, ISMAIL S. SEKENDIZ,
LAURIE E. MORRISON, ZAFER A. AKIN, MARJORIE
MESIDOR, DEREK T. SMITH LAW GROUP, P.C.,
ARCE LAW GROUP, PC, PHILLIPS & PHILLIPS,
and JESSICA DUGUE,

Defendants.
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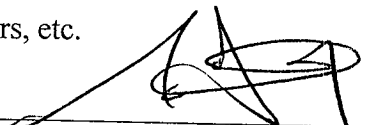
RULE 7.1 STATEMENT



Pursuant to Rule 7.1(a) of the Federal Rules of Civil procedure, the undersigned counsel for Defendants hereby certifies that Defendants DEREK T. SMITH LAW GROUP, P.C., ARCE LAW GROUP, PC, and PHILLIPS & PHILLIPS are privately held companies that do not have any corporate parents, subsidiaries, or affiliates that are publicly held.

Dated: New York, New York
June 13, 2012

Yours, etc.



David J. DeToffol, Esq.(DJD 7877)
DeToffol & Associates
Attorney for Defendants
30 Broad Street, 35th Floor
New York, New York 10004
(212) 962-2220

TO: Anil Taneja, Esq., MBA
Attorney for Plaintiff
244 5th Avenue, 2nd Floor
New York, New York 10001
(212) 592-4000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
 } ss.
COUNTY OF NEW YORK }

I, Christopher Neumeister, being sworn, deposes and says;

I am not a party to the action, am over eighteen (18) years of age and reside in Kings County, City and State of New York.

On June 13, 2012, I served the within NOTICE OF FILING OF NOTICE OF REMOVAL, together with the Federal NOTICE OF REMOVAL and accompanying exhibits via First Class Mail, by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following:

Anil Taneja, Esq.
244 5th Avenue, 2nd Floor
New York, New York 0001



Christopher Neumeister

Sworn to before me on this
13 day of June, 2012

Notary Public/State of New York

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK**

-----X
KEVIN WATKINS,

Index # 14726/12

Plaintiff,

**DEREK SMITH, ADRIANE EISEN, BRYAN S. ARCE,
WILLIAM K. PHILLIPS, ISMAIL S. SEKENDIZ,
LAURIE E. MORRISON, ZAFER A. AKIN, MARJORIE
MESIDOR, DEREK T. SMITH LAW GROUP, P.C.,
ARCE LAW GROUP, PC, PHILLIPS & PHILLIPS,
and JESSICA DUGUE,**

Defendants,
-----X

NOTICE OF FILING OF NOTICE OF REMOVAL

DETOFFOL & ASSOCIATES
ATTORNEYS AT LAW
30 Broad Street, 35th Floor
New York, New York 10004
(212) 962-2220